IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20323 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NANJIBHAI SARDARBHAI RAJAT - Petitioner(s)
Versus
DIRECTOR GENERAL & 1 - Respondent(s)

==========

Appearance :
MR BHUSHAN B OZA for Petitioner(s) : 1,
MR PURVISH J MALKAN for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 22/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Rule. Learned Central Government Counsel Mr.Purvish Malkan waives service for respondents on the advance copy of this petition being served upon him.

The petitioner-Nanjibhai Sardarbhai Rajat joined the duty as Constable in the discipline force of B.S.F. in 1990. For attending marriage of his brother on 30.4.2003, he applied for leave from 26.4.2003 to 19.5.2003. Thereafter, he did not join duty for considerably long time. Therefore, by fax message dated 11.11.2003, he was asked to immediately report, failing which he was informed that his services will be terminated. Though served with two show cause notices, he did not join the duty. In stead, he preferred to get bogus medical certificate dated 28.1.12003 from ODMO-cum-Civil Surgeon, Panchmahals, Godhra (Annexure-E) that he was

examined on 5.5.2003 as he was suffering from severe back ache and U.T.I. and, therefore he was advised rest from 5.5.2003 to 27.11.2003. He was physically fit to resume duty from 28.11.2003. By that time, the respondent authority has terminated his services by order dated 25.11.2003 (Annexure-C) for remaining absent from duty without leave and without sufficient cause for a very long period of more than 6 months. It was duly served to the petitioner on 16.12.2003.

Aggrieved by the order of dismissal from service, for the first time, on 11.7.2006 he made a representation (Annexure-A) and thereafter approached this court by way of this petition in August, 2006 and moved this court today for orders.

Mr.Bhushan Oza for the petitioner submitted that without giving any opportunity of hearing the respondent dismissed the petitioner from service. Therefore, the impugned order is in

violation of principles of natural justice and hence it may be quashed and set aside. Mr.Malkan for the respondents pointed out from the impugned order at Annexure-C dated 25.11.2003 that the petitioner was given opportunity by way of show cause notice dated 2.9.2003 as well as notice dated 8.10.2003. But, he did not respond to it and, therefore, the impugned order of dismissal came to be passed. Thus, it is clear that there was no violation of principles of natural justice in the matter.

Mr.Oza for the petitioner, however, submitted that the petitioner was suffering from acute depression and instability of mind. Therefore, he was taken to Katlal village for taking witchcraft treatment as he was both physically and mentally not in a position to resume his duties and, therefore, he over-stayed his leave.

In the age of advanced technology also people are believing this type of treatment for their

physical and mental ailments instead of taking proper medical treatment. Such a person, who is mentally as well as physically unfit cannot be retained in discipline force like B.S.F. even for a minute.

Last submission made by Mr.Oza was that the respondents be directed to decide his representation dated 11.7.2006 (Annexure-A) after extending an opportunity of hearing to him. There is no such provision to consider and decide the representation, after extending an opportunity to the petitioner. It is clear that the petitioner was dismissed from service way back on 25.11.2003 and he woke up after a period of almost 3 years from the date of his dismissal and only with a view to invoke the extra-ordinary writ jurisdiction of this court under Article 226 of the Constitution of India, he first approached the respondents by way of representation in September, 2006 and immediately thereafter within a period of one month or so, he approached this

court by way of the writ petition so that this court may not throw out his case on the ground of gross delay and laches in challenging the impugned order. If any such direction is issued to the respondents to decide the representation after extending an opportunity to the petitioner, then it will furnish fresh cause, which cannot be allowed.

In view of the above discussion, on all counts, including gross delay, this petition is required to be dismissed. Accordingly, it is dismissed. Rule discharged. No order as to costs.

(B.J.SHETHNA, J.)

(M.D.SHAH, J.)

*pvv